

46 Am. Jur. 2d Judges § 163

American Jurisprudence, Second Edition | February 2022 Update

Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

1. In General

§ 163. Right to disqualify judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(1)

Trial Strategy

[Disqualification of Judge for Cause](#), 50 Am. Jur. Proof of Facts 3d 449

[Dealing with Judges and Court Personnel](#), 55 Am. Jur. Trials 443§ 41 (Motions to have judges disqualified for prejudice or bias)

Forms

Forms relating to disqualification of judge, generally, see Am. Jur. Pleading and Practice Forms, Judges; Am. Jur. Pleading and Practice Forms, Venue [\[Westlaw®\(r\) Search Query\]](#)

Although litigants are not afforded the judge of their choice,¹ the right to disqualify a judge is one of the keystones of the court's legal administrative edifice.² Courts adhere to a rule of liberal construction in favor of the right to disqualify a judge,³ although

the right to challenge an assigned judge is not unlimited,⁴ and parties are not permitted to manipulate the rules of procedure in order to obtain a favorable judge.⁵

In some jurisdictions, it is sufficient merely to file an affidavit to disqualify a judge,⁶ while in others provision is made for a hearing.⁷ Some jurisdictions permit, under certain circumstances, a party to challenge an assigned judge peremptorily, without regard to cause.⁸ A judge may also self-disqualify sua sponte.⁹

Remedies to prevent a disqualified judge from acting are, where available, prohibition¹⁰ and mandamus.¹¹

Although a change of venue on the basis of judicial disqualification is not the rule in some jurisdictions, in other jurisdictions statutes have been enacted providing for a change of venue on the ground of judicial disqualification.¹² A motion for change of venue was not construed as a motion for recusal, where the movant's justification for the motion arose largely out of alleged comments made by the judge which were not apparent in the record, and the remaining comments occurred after the motion had been denied.¹³

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Footnotes

- 1 [Sanchez v. State](#), 124 S.W.3d 767 (Tex. App. Houston 1st Dist. 2003).
- 2 [Elrod v. Stewart](#), 163 S.W.3d 587 (Mo. Ct. App. W.D. 2005).
- 3 [Hemingway v. Superior Court](#), 122 Cal. App. 4th 1148, 19 Cal. Rptr. 3d 363 (4th Dist. 2004).
- 4 [State v. Stockert](#), 2004 ND 146, 684 N.W.2d 605 (N.D. 2004).
- 5 [Walker v. Walton](#), 2003-NMSC-014, 133 N.M. 766, 70 P.3d 756 (2003).
- 6 § 184.
- 7 §§ 188 to 197.
- 8 § 179.
- 9 § 164.
As to disqualification of judges in federal courts pursuant to motion, see [Am. Jur. 2d, Federal Courts](#) §§ 47 to 52.
- 10 [Am. Jur. 2d, Prohibition](#) §§ 69 to 71.
- 11 [Am. Jur. 2d, Mandamus](#) §§ 317 to 319.
- 12 [Am. Jur. 2d, Venue](#) § 58.
- 13 [In re S.D.](#), 671 N.W.2d 522 (Iowa Ct. App. 2003).

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